IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3136 OF 2006

Danish Kazi .. .. Petitioner
v/s.
Union of India & ors. .. .. Respondents

Mr.Nitin Pradhan with Ms.Dilbur Contractor for petitioner-applicant.

Mr.R.C.Master with Mr.N.D.Sharma and Mr.Irfan Engineer for respondent Nos.1 & 2.

Mr.P.M.Patil, AGP for respondent Nos.3 & 4.

CORAM : H.L. GOKHALE, ACTING C.J. &
V.M. KANADE, J.

DATED : 27th February 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. This Petition is filed for writ of mandamus to direct the respondents to issue a passport to the petitioner pursuant to the application which he made on 16th August 2004. A reply has been filed by the Police Sub-Inspector, Lashkar Police Station, Pune. It is stated therein that the petitioner was prosecuted amongst others under Sections 302, 376 and 366 of the Indian Penal Code. He has, however, been acquitted from all those charges levelled against him by a judgment and order dated 30th June 2004. An Appeal has been filed against the said judgment and order with an application seeking leave to appeal. The said application is numbered as Civil Application No.884 of 2005. Inasmuch as there is

a delay in filing that application, another application bearing Application No.885 of 2005 is also filed. The concerned Police Station has said that the Petition should not be entertained for that reason.

3. The earlier position in this behalf was that under Section 6(2) of the Passports Act, 1967, the Passport Authority was bound to refuse to issue a passport for the grounds stated therein and sub-ground (f) thereof is when the proceedings in respect of an offence alleged to have been committed by the applicant are pending before a Criminal Court in India.

4. Mr.Pradhan, learned Counsel appearing for the petitioner-applicant, has pointed out that subsequently in exercise of the powers under Section 22(a) of the Passports Act, the Central Government has issued a Notification on 25th August 1993 whereunder such persons can be exempted from the operation of sub-section (2) of Section 6 subject to the conditions mentioned therein. In any case, it is clear from this Notification that the power is with the Court which is seized of the matter. That being so, the proper remedy for the petitioner-applicant will be to apply before the Division Bench of this Court which is seized of Criminal Application Nos.884 of 2005 and 885 of 2005. This being the position, Mr.Pradhan seeks leave to withdraw this Petition

i.e. Writ Petition No.3136 of 2006 along with Civil Application No.227 of 2007 moved therein with a liberty to make appropriate application before the concerned Division Bench.

5. The Petition and the Civil Application are allowed to be withdrawn with liberty as prayed for.

6. The papers of Criminal Application No.884 of 2005 were placed before this Court and tagged along with this matter for this Court to peruse the proceedings of that matter. The papers be de-linked and be placed before the appropriate Division Bench at the earliest.

7. We make it clear that when any such application is made before the concerned Division Bench, apart from joining the State of Maharashtra, the petitioner-applicant will join respondent Nos.1 and 2 herein as the respondents to the proposed application.

(ACTING C.J.)

(V.M. KANADE, J.)